

Testimony before the United States Congress on behalf of the



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*Testimony of*

***Andrew M. Langer***  
***Manager, Regulatory Policy***

*Before the*

***The House Government Reform Committee***  
***Subcommittee on Regulatory Affairs***  
***Hearing on Small Business Paperwork Burdens***

*on the date of*

***March 8, 2006***

Chairman Miller and Members of the House Government Reform Committee,  
Subcommittee on Regulatory Affairs:

On behalf of the 600,000 small-business owners represented by the National Federation of Independent Business, I would like to thank you for the opportunity to discuss with you the burden of regulatory paperwork imposed by the federal government and to offer NFIB's insights about how to improve the way in which the federal government goes about reducing the amount of paperwork filled out by America's small businesses each year.

Nearly a year ago, I offered testimony on regulatory burdens faced by small business at a roundtable chaired by you. A year later the reauthorization of PRA is a good opportunity to update you, and to offer some possible solutions to those problems.

NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Ninety percent of NFIB members have fewer than 20 employees. While there is no standard definition for a small business, the typical NFIB member employs five people and reports gross sales of around \$350,000 per year. However, all NFIB members have one thing in common; their businesses are independently owned.

Being a small business owner means, more times than not, you are responsible for everything (ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments). That is why simple government regulations, particularly when it comes to the paperwork they generate, are so important. The less time our members spend with "government overhead," the more they can spend growing their business, employing more people and growing America's economy.

As I have said before, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change. Last year, I discussed with you a report commissioned by the Small Business Administration's Office of Advocacy, estimating the regulatory compliance costs for firms with fewer than 20 employees. At that time, the cost was nearly \$7,000 per employee, per year.<sup>1</sup>

But that seminal piece of research has been updated. Not only updated, but updated now with a peer review process that lends even greater credence to the research. Unfortunately for small business owners, however, the new data isn't good —the cost of

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<sup>1</sup> Report for the SBA Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, Crain and Hopkins, 2001 (<http://www.sba.gov/advo/research/rs207tot.pdf>)

regulation for small businesses has risen by nearly 10 percent, to \$7,647 per employee, per year.<sup>2</sup>

This means that for one of NFIB's average members, with five employees, those costs now approach a total of \$40,000 annually. For a business operating on a shoestring, such costs can be devastating.

My testimony is going to cover a number of different things. First, I'd like for members of the committee to get an understanding of the regulatory burden in the form of paperwork, and reiterate the results of a survey from 2004 by NFIB's Research Foundation regarding Paperwork and Recordkeeping.

Then, I will focus on specific areas where Congress has the opportunity to change the status quo and strengthen federal laws addressing this paperwork burden, and other potential solutions to this crippling problem.

These suggestions will fall into three basic areas—the pillars of true regulatory reform. The first is a proper assessment of the problem: just what is the burden? If you have not assessed or cannot assess the problem, then any solutions you propose will, in all likelihood, fall short of the goals. Then, once assessed, what is it that needs to be done? How do we get maximum benefit? And finally, what are some simpler fixes that can be made in the short term to achieve real results for small business.

In terms of the paperwork burden imposed by regulations themselves, NFIB's own Research Foundation has engaged in in-depth studies of the problem being faced by small businesses. The NFIB Research Foundation is a non-profit 501(c)(3) organization, and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion was that the best thing for small businesses is simplicity—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them, and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below).

### **Measuring the Burden of Paperwork: The NFIB Research Foundation's Recent Polling on Paperwork Costs**

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly \$50 per hour. In addition, the following conclusions were reached<sup>3</sup>:

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<sup>2</sup> Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms*, 2005, <http://www.sba.gov/advo/research/rs264.pdf>

<sup>3</sup> NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, [http://www.nfib.com/PDFs/sbpoll/sbpoll12\\_2003.pdf](http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf)

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners most frequently handle paperwork and record-keeping related to licenses and permits (55% of firms), purchases (46%), and clients/customers (46%). They least frequently deal with financial (27%) and tax (12%) records. Three of four pay to have someone (another firm) outside handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases. (And, as is discussed below, in the case of TRI reporting, owners do it more often themselves, or use consultants.)
2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher. (This confirms the findings of the informal survey above).
3. The estimated average per hour cost of paperwork and record-keeping for small businesses is \$48.72. By subject matter the average per hour cost is: \$74.24 for tax-related, \$62.16 for financial, \$47.96 for licenses and permits, \$43.50 for government information requests, \$42.95 for customers/clients, \$40.75 for personnel, \$39.27 for purchases, and \$36.20 for maintenance (buildings, machines, or vehicles).
4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.
5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29%). The second most frequently cited difficulty is the volume of paperwork (24%). Duplicate information requests (11%) place third, followed by maintenance of records that ordinarily would not be kept (10%) and requests for inaccessible or non-existent information (9%). Twenty (20) percent could not decide.

While the use of computers by small businesses and small business owners has certainly helped reduce the burden of regulations, technology alone cannot solve the problem. More than filing forms and storing copies, paperwork requirements involve understanding the what the government wants and how they want it, gathering the necessary information and organizing it properly, determining what to keep and for how

long, etc. And, then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. People must organize and input the necessary data, and people are expensive.

According to research by The NFIB Research Foundation, 92% of small businesses use computers in some aspect of their business. 82% of small businesses have internet access, and of those, 57% have high-speed internet access. Half of the businesses that use the internet use it to find out regulatory information, and the smaller of small businesses are more likely to use the internet to educate themselves. They use it for specific searches, and to sift through information.<sup>4</sup>

Because of this, I believe that the Business Gateway program undertaken by the Small Business Administration is a good step towards alleviating the problem of using computers. That program would allow small-business owners to input simple data regarding their businesses, and they would immediately receive all of the information necessary to fulfill their regulatory burdens. It is an ambitious program, but one that ought to be supported fully by Congress, and is discussed in greater detail below.

As to the issue of paperwork costs associated with tax preparation, it has been recognized in the past that the requirements levied by the Internal Revenue Service represent a significant portion of the burden faced by small businesses. Currently, the IRS has no mandate to reduce paperwork burdens, as there exists a Memorandum of Understanding between IRS and the OMB regarding the application of SBREFA to the tax collecting agency. The Department of the Treasury hasn't designated a single point of contact on paperwork, nor has it completed the required reporting on enforcement of paperwork reduction laws.

In order to take a significant bite at the paperwork apple, some oversight must be made regarding the burdens levied by the IRS. The MOU ought to be examined, and there ought to be a reconsideration of the current policy agreements between OMB and the IRS. Tax paperwork costs nearly \$75 per hour and small businesses can ill-afford to have such resources siphoned off. Some consideration should be given to new legislation aimed at holding the IRS accountable to paperwork reduction laws already applying to other agencies.

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<sup>4</sup> NFIB National Small Business Poll Volume 4, Issue 8, "Telecommunications,"  
<http://www.nfib.com/object/telecomm.html>

## **Specific Legislative Recommendations**

### **Full-funding for OIRA**

Key in the fight to produce regulations that make sense, that address real public policy problems, whose benefits outweigh their costs, and are presented to the regulated public in the least-burdensome manner possible is the Office of Information and Regulatory Affairs at the Office of Management and Budget (OIRA). OIRA acts as a gatekeeper for all new regulations, and has been particularly instrumental in ensuring that the most burdensome regulations are re-thought by the agencies proposing them.

Unfortunately, almost immediately since its founding, OIRA's resources have been hamstrung. Budgets and staff have, over the years, been cut back. This has had the effect of hampering OIRA's ability to do all that needs to be done in the realm of ensuring a sensible regulatory state with minimized paperwork burdens. At the same time that the OIRA has been experiencing cut-backs, the population of those who create new regulations has continued to increase dramatically.

The lack of viable resources to OIRA comes at a high price to the regulated public (e.g.- NFIB members and small-business owners as a whole). For instance, in prior testimony to the House Government Reform Committee, there has been a great deal of discussion regarding "bootleg" regulatory forms. These are forms that individual agency offices create for the regulated community to use, but are not vetted through the required paperwork processes. The regulated public is unsophisticated as to the intricacies of federal paperwork law, so when they see a form from a federal agency, by and large they are not going to question the legality of that form or their obligations in completing this paperwork.

An OIRA that is crippled by a lack of resources cannot adequately assess paperwork burdens, let alone ferret out which agencies might be surreptitiously adding to that paperwork burden through the use of bootlegs. As the agency that acts as a gatekeeper to ensure that regulatory actions and activities are both meaningful and appropriate, it is reasonable to expect that OIRA have the funding and support necessary to carry out its activities.

Congress must act to rebuild OIRA's resources. A reinvigorated OIRA can once again expand its review of regulations and the burdens imposed by them. A reinvigorated OIRA can comprehensively assess the impact of regulations on small business on an annual basis, instead of focusing on a narrow slice or subset of those regulations, as is currently the case. Advocates for small business and other groups have repeatedly voiced their concerns in recent years over this, and OIRA has responded by saying that because their resources are limited, they have to focus on the regulatory burden in this way.

As I said above, for regulatory burdens to be reduced, a number of things have to happen. Step one is a proper assessment of those burdens, and a proper reassessment on an annual basis. Responsibility for that falls squarely on OIRA's shoulders.

### **Strengthen Provisions on Unnecessary Duplication**

The issue of duplication goes hand-in-hand with the issue of ease of access to regulatory compliance information. Currently, it is next-to-impossible for the federal government to ascertain what information is duplicatively required from one agency to the next. Because it is so difficult, despite mandates that inquiries into duplicative requirements be done by agencies during the promulgation of rules or during the collection of information, agencies are hard-pressed to do it.

These rules have to be strengthened. It is maddening for a small business owner to fill out a series of regulatory forms for one agency, and then transfer that information in a similar, but slightly different form, for another agency. It is frustrating, and it is time consuming – and time is the most precious commodity that a small business owner has.

If Congress takes a leadership role on the implementation of the Business Gateway System, then it should put rules into place which would address the issue of duplication, before and during the Business Gateway development process. Part and parcel of any electronic system should be the recognition that information being collected and used for one agency as part of the regulatory process should be checked, and if possible, translated for use by another agency.

### **Limit the Number of Information Collection Requests**

Small businesses are constantly being bombarded by requests for information from federal agencies. These "Information Collection Requests" or "ICRs" add greatly to the paperwork burden associated with regulation, and ought to be limited sharply. Were Congress to limit the number of ICRs agencies could put forth in any given year, it would force agencies to prioritize the use of ICRs, and therefore only bother small business owners when it was absolutely necessary.

Small business owners cannot do everything that they want to do within a given year. They are limited by time and by resources. Therefore, they have to prioritize which things are essential or important for their business' success. So it should be with federal agencies and their requests for information.

As Congress explores how to lessen the impact of paperwork burdens on small business, it is worthwhile to encourage the regulatory agencies to examine more closely how to reduce the burdens imposed by ICRs. Some have suggested limiting agencies to a specific number of collection requests each year. Others have recommended that OIRA develop stricter criteria that ICRs must meet before being approved for use. Still, others have suggested that like the small businesses which will have to comply with the ICR,

that agencies prioritize which ICRs are of the most significance or the highest priority. This suggestion is certainly reasonable and would be worthy of additional discussion as Congress moves forward with this process.

Of further help would be some demonstration on the part of federal agencies that when they have decided to seek information from small businesses, that they have made an effort to minimize that ICRs impact. This could be done in a variety of ways, but NFIB suggests that the agency demonstrate this through some certification to OIRA or the SBA's Office of Advocacy that it has been done.

Once the Business Gateway is created, all ICRs should be made available therein. In the interim, at the very least, ICRs ought to be put on the Regulations.Gov website for public availability.

### **Guidelines for Paperwork Impact Analyses and Mandates for Reduction**

Agencies must do a better job at gauging the impact of paperwork on individuals and small businesses. Much in the same way that agencies are required to measure economic impacts, impacts on property rights, etc, NFIB suggests that Paperwork Impact Analyses ought to be conducted. If new regulations require reporting, then a measurement of the impact of the paperwork associated with the regulations should be done.

But because of disparities in the application of current mandates throughout the federal government, set guidelines must be created. These guidelines would mandate that agencies set out:

- (a) the quantity of paperwork that might be generated from the regulation;
- (b) the amount of time dedicated to paperwork associated with the regulatory compliance;
- (c) the cost of compliance (financial) to meet the paperwork burden resulting from the regulation;
- (d) An assessment if the paperwork burden will impose a significant/unique hardship for small business.

If so, the agency proposing the regulation will be required to send a statement of justification to the SBA's Office of Advocacy so that it can be a part of a Regulatory Flexibility Analysis.

Congress should also set meaningful goals for agencies to reduce paperwork, based in no small part on those impact analyses.



### **Application of Data Quality Act to SBREFA and PRA Requirements**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) created a series of tools that have proved invaluable in the effort to craft regulations that are fairer for small business. A number of these provisions are judicially reviewable.<sup>5</sup>

But challenging agency determinations under the Administrative Procedures Act has been somewhat elusive for small businesses negatively impacted by new regulations. Agencies are still given tremendous deference in the defense of their reviews. A vital tool in that regard would be the Data Quality Act.

Ensuring that the Data Quality Act applies to all aspects of regulatory and paperwork certifications and reviews means that challengers to agency action can question the underlying analytical assumptions surrounding decisions, in addition to the analyses and the decisions themselves.

### **Regulatory Sunsetting**

As stated earlier, as important as effectively dealing with regulations “coming down the pipeline” is, something must be done to deal with the myriad of regulations currently on the books. Currently, Section 610 of the Regulatory Flexibility Act mandates that agencies review “economically significant” regulations within ten years of their implementation.

But the problem isn’t limited to regulations of economics significance. No, the problem has always been more of the myriad of regulations a small business is subjected to—individually, they may not amount to much, but taken together they pose a tremendous burden. Unfortunately, agencies have little incentive and little guidance to do proper “610 reviews.”

It is up to Congress to create those incentives, and NFIB suggests that Congress consider the mandate that every federal regulation be reviewed for their impact and effectiveness within ten years of its implementation, and create guidance as to what those reviews ought to constitute. Any regulation that is not reviewed at that ten-year point would automatically sunset, and for a regulation to remain in place, its existence would have to be justified.

In the real world, businesses are constantly reviewing their “best” practices, to see what works, what doesn’t, what is a drain on the business, etc. Not only is there no reason for the federal government to not be doing this, it is a disservice to the American people that they do not do it. Improving on the way government impacts the private sector should be a top priority.

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<sup>5</sup> A list of those is available at [http://www.sba.gov/advo/archive/sum\\_sbrefa.html](http://www.sba.gov/advo/archive/sum_sbrefa.html).

### **Technological Responses: E-Docketing and the Business Gateway**

To its credit, the federal government has recognized that, as in industry, technology can provide a number of solutions to the burdens posed by regulation. Two separate tracks, very different, and important in their own way, are being pursued. Unfortunately, the federal government has emphasized a single-track perspective at the outset, focusing mainly on e-docketing and e-democracy rather than comprehensively focusing on the compliance side of things as well.

A mainstay principle of NFIB and its membership has been addressing the burden posed by current regulations, and finding ways to minimize that burden. Too frequently, however, the tools available to small businesses have focused on those regulations that are coming down the pipeline. Make no mistake, this is important—we absolutely have to stem the tide of the burden posed by new regulations.

But we must do something to focus on the burden of regulations that are on the books. I have already discussed some of the procedural tools that would assist in this regard, including sunseting, but would like to go into greater detail as to some of the technological possibilities mentioned earlier.

The promise of e-docketing is that it will make it easier for small businesses and individuals to offer their thoughts on proposed rules. By offering a “real world” perspective, career civil servants can make regulations that are smarter and more meaningful. What’s more, electronic docketing is an excellent tool for those doing the regulatory decision-making, in that it makes it easier for regulators to break down and analyze comments.

Yes, this is important. But the problem is that too many small businesses are spending too much time doing federal paperwork already, and it is simply too much to ask of them right now to take additional time and resources to comment on a complex regulatory proposal. Sure enough, there are some businesses and individuals that will comment, and the regulatory state can only benefit from their expertise, but the executive branch must reduce burdens elsewhere if they hope to invest a more substantial set of the population in the rulemaking process.

As mentioned earlier, the Business Gateway is a good step in this direction, and a greater emphasis must be placed on the continued development and implementation of this system. Everyone involved in regulation: the regulated community, activist stakeholders, members of Congress and their staffs, the federal agencies and their personnel, all must ask the same question—what is it that we want from the regulated community, in the end?

The answer, at least in our estimation, is simple: we want the regulated community (again, our members and the small business community as a whole) to understand its responsibilities when it comes to regulatory compliance and comply with those

regulations that apply to them. What's more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a government inspector to show up at their offices and fine them for some transgression.

Unfortunately, the regulatory state is so complex (consider in your minds, for a moment, the wide expanse that is the Code of Federal Regulations, and just what a small business owner would need to do to figure out his responsibilities) that it is next-to-impossible for any small business to be in compliance with 100% of the law 100% of the time.

But imagine a system in which a small business owner could enter some simple information about his business: his industrial classification code, for instance, a zip-code, number of employees, etc. As discussed above, 92% of small businesses have computers, most with internet access (the majority of it high-speed), so the vast majority of businesses could do this if they so chose to do it.

Then the system takes that information and spits out each and every regulation that applies to this business, along with simple compliance information (no more than a few pages of easy-to-understand English, I would hope). It would be even better if this system could provide an on-line access for small businesses to submit forms, should they choose to submit them that way (the operative word being "choose" – not mandate).

Yes, this is an ambitious idea. But in an era in which huge databases can be accessed from thousands of miles away in a safe, secure, and fast manner, it is not an impossible task. The current iteration of the Business Gateway, Business.Gov, is a solid step in the right direction. But it must do more, far more, in terms of offering a simple way for businesses to determine what their regulatory responsibilities are, and to make living up to those responsibilities as easy as possible.

What it will take is leadership from Congress. Funding, oversight, and the political will to see it happen.

If Congress is serious about reducing paperwork, then it must do something about making the fully-functional, fully-realized Business Gateway a reality. Once that is established, and businesses know their responsibilities, and compliance is made as simple as possible, then businesses will not only have the time and resources to devote to helping the government craft smarter regulations, they will have an incentive to be invested in the process.

Not all businesses would do it (not all businesses have computers), so the option to find out about regulations in the traditional manner would still have to be in place. But such a system would be far superior than that which is available to small business owners today, and a tremendous leap in seeking greater regulatory compliance.

Until then, however, the benefits of technology, whose primary purpose is e-docketing accrue mostly to those who work in government.

## **Conclusion**

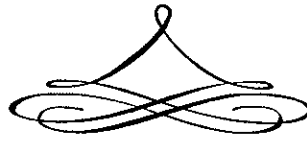
The broad distribution across various possible answers to our poll suggests that there is no single regulatory paperwork problem. There are many problems and that implies the need for many solutions. The result is regulations, and the paperwork resulting from those regulations, continue to represent a major aggravation for small-business owners. But it is also a place where they can use sweat equity to save cash. When asked how much they would be willing to pay to have someone take over all the paperwork they must complete, 17 percent said nothing and 5 percent indicated less than \$10 per hour. Still, it is better to neither pay someone to handle paperwork nor to put in this type of sweat equity. That situation would occur if the demands for records were not made in the first place.

Regulations, therefore, become particularly burdensome for those who do not have the resources to hire someone to handle them. Among that group are people just starting businesses, those who could use the greatest asset they have, themselves, for higher purposes than completing and maintaining forms.

Simple, easy-to-understand requirements, and fewer of them, are the keys to real relief from the paperwork burden plaguing small business. Agencies that are currently reluctant to fulfill their paperwork reduction requirements must be made to do so. Their hesitation bleeds small businesses dry by diverting precious resources, both in the form of manpower and cash, away from doing their business to working for the federal government. Given the importance of small business job creation to economic health, it is never more important to address this issue than now.

NFIB appreciates the opportunity to comment on the possibility for reducing the regulatory burden faced by small businesses. Clearly, paperwork represents a costly burden in terms of money spent on reporting, the time taken to fill out forms, and the overall drain on manpower in the process. It is our hope that some significant steps can be taken to reduce this burden and that EPA and other agencies will adopt some of the recommendations suggested by NFIB. We believe that these suggestions address the issue of simplifying the burden, while still maintaining the integrity of information required by statute and regulation.

Thank you once again for the opportunity to testify on this important issue.



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### **NFIB CORE VALUES**

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

An informed, educated, concerned and involved public is the ultimate safeguard.

Members determine the public policy positions of the organization.

Our employees, collectively and individually, determine the success of the NFIB's endeavors, and each person has a valued contribution to make.

Honesty, integrity, and respect for human and spiritual values are important in all aspects of life, and are essential to a sustaining work environment.



1201 F Street NW, Suite 200  
Washington, DC 20004  
202-554-9000